

Claims 1-18 were rejected under 35 U.S.C. §112, first paragraph. The Office Action alleges that there is insufficient hardware or structure and software or program disclosure to enable one of ordinary skill in the art to make and use the invention recited in independent claims 1, 10 and 18. Additionally, claims 1-18 were rejected under 35 U.S.C. §112, second paragraph. The Office Action alleges that claims 1, 10 and 18 recite control and/or processing units that are said to have either a smaller control load or a greater control load, which is allegedly indefinite. The rejections are respectfully traversed.

During the personal interview, the Examiner explained to Applicants' representative that these rejections are based on interpreting the independent claims as containing means-plus-function limitations. Claim 1 calls for a failure sensing device that is provided to a control unit with smaller control load and includes an output portion outputting information to the processing unit with greater control load, a receiving portion receiving a response corresponding to the information from the processing unit, and a sensing portion sensing a failure in said processing unit based on said information and said response. Claims 10 and 18 call for similar features but use "means for."

The Examiner alleged that the "portions" used in claim 1 (i.e., output portion, receiving portion and sensing portion) are being interpreted as means-plus-function limitations. Further, based on the interpretation that these portions are means-plus-function limitations, the Examiner explained that the scope of a means-plus-function limitation has to be defined by the structure disclosed in the specification plus any equivalents of that structure. In the absence of structure disclosed in the specification to perform those functions, the claim limitation would lack specificity, rendering the claim as a whole invalid for indefiniteness, citing *Aristocrat Techs. Austl. Pty v. Int'l Game Tech.*, ____ F.3d____, (Fed. Cir. Mar. 28, 2008).

The Examiner stated that in *Aristocrat*, the Federal Circuit explained that for a patentee to claim a means for performing a particular function and then to disclose only a general purpose computer as the structure designed to perform the function without any algorithm amounts to pure functional claiming.

Applicants respectfully assert that claims 1, 10 and 18, as written, differ from the facts in *Aristocrat* because the independent claims are not attempting to claim the controlling processes performed by the control unit and the processing unit as in *Aristocrat*. Applicants' claims instead describe an arrangement of the control unit and the processing unit where a particular function (failure sensing) is provided to the control unit with a smaller control load. Further, failure sensing is defined as being based on information (output to the processing unit) and a response (received from the processing unit).

Further, because of the doctrine of claim differentiation, claim 1 cannot be interpreted as having means-plus-function limitations. That is, because claims 10 and 18 have features that are identical except that "portion" from claim 1 is replaced with "means for," claim 1 cannot be interpreted as having means-plus-function limitations.

As such, Applicants respectfully assert that the facts of claim 1 are different from the facts set forth in *Aristocrat* and are therefore not indefinite.

Also, even if the holding in *Aristocrat* is applicable to this case, which Applicants do not admit, Applicants assert that an algorithm is disclosed at least in Applicants' specification at Fig. 2. Thus claims 1, 10 and 18 are definite because Applicants' actually disclose an algorithm.

Further, Applicants respectfully assert that "smaller control load" and "greater control load" are terms that would easily be understood by one having ordinary skill in the art. Therefore, these terms do not render the claims indefinite.

It is respectfully requested that the rejections be withdrawn.

Claims 1-18 were rejected under 35 U.S.C. §103(a) over Loehr et al., U.S. Patent Application Publication No. 2003/0023407, in view of Toshifumi et al., JP-A-7-329701. The rejection is respectfully traversed.

Claim 1 calls for a failure sensing device that is provided to said control unit with a smaller control load and an output portion that outputs information to the processing unit with a greater control load. Claims 9, 10 and 18 call for similar features. The Office Action alleges that the hierarchical functions disclosed in Loehr are equivalent to the control load as called for in claim 1. As agreed during the personal interview, the hierarchical structure disclosed in Loehr is independent of a control load and therefore Loehr does not disclose the failure sensing device or the output portion as called for by independent claim 1. That is, Loehr does not disclose smaller and greater control loads.

Claims 2-8 and 11-17 are patentable by reason of their dependency from one of independent claims 1 and 10, as well as for the additional features they recite.

It is respectfully requested that the rejection be withdrawn.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,


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